

DEC 21 2007

Dec. 21, 2007

**MICHAEL W. DOBBINS**

**CLERK, U.S. DISTRICT COURT**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**GROW MODERN KIDS LLC,**

Plaintiff,

**V.**

**DANNY ROBERTSON and  
SUMMER ROBERTSON, d/b/a  
GROW MODERN,**

**Defendants.**

**07CV7193**

# JUDGE HART

**MAG. JUDGE VALDEZ**

[illegible]

Plaintiff Grow Modern Kids LLC (“Grow”), by its undersigned counsel, as and for its Complaint against Defendants Danny Robertson and Summer Robertson, d/b/a Grow Modern (collectively “Defendants”), hereby alleges as follows:

## PARTIES

1. Plaintiff Grow is a limited liability company organized and existing under the laws of Illinois with a principal place of business at 1943 West Division, Chicago, Illinois 60622.
2. On information and belief, defendants Danny Robertson and Summer Robertson are husband and wife doing business variously as New Industries and Grow Modern, and having a principal place of business at 4603 SW 45<sup>th</sup> Avenue, Portland, Oregon 97221.

## **JURISDICTION AND VENUE**

3. This action arises under the Lanham Trademark Act of 1946 (15 U.S.C. § 1051 et seq.), the Illinois Consumer Fraud and Deceptive Trade Practices Act (815 ILCS 505/1 et seq.), the Illinois Uniform Deceptive Trade Practices Act (815 ILCS 510/1 et seq.) and federal and state common law.

4. This Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 1119, 15 U.S.C. § 1121, 18 U.S.C. § 1964(a), 28 U.S.C. §§ 1331, 1332, 1338(a-b), and 1367(a) and the Court's pendent jurisdiction.

5. This Court has personal jurisdiction over Defendants because, upon information and belief, Defendants: (a) regularly transact business within the State of Illinois; (b) contract to supply goods and/or services within the State of Illinois; and/or (c) knowingly and/or intentionally caused tortious injury to Grow in the State of Illinois by acts or omissions outside the State while regularly soliciting business and/or engaging in any other persistent course of conduct in the State and/or deriving substantial revenue from goods or services used in the State.

6. Venue in this district is proper under 28 U.S.C. § 1391(b) and (d).

#### **NATURE OF THE CASE**

7. This is an action for trademark infringement, unfair competition, and cybersquatting in violation of federal and state law.

#### **FACTS**

8. Grow is the owner and operator of "Grow", an innovative and unique boutique where consumers can purchase high quality clothing, modern furniture, and gear (such as strollers) for babies and toddlers. Grow has a particular focus on products that are organic, sustainable, or environmentally friendly. The Grow retail store in Chicago opened its doors in September 2006, and launched its web site, located at [www.grow-kids.com](http://www.grow-kids.com), in November of 2006.

9. Since Grow opened for business in 2006, and continually since that date, Grow has used the trade name GROW MODERN KIDS, the trademark GROW and the logo shown here (collectively, "the GROW Marks") to identify itself as a company and its retail services:



10. Grow has received recognition at the local, regional, national and international levels, including editorial mentions in the *New York Times Travel Magazine*, the *Toronto Globe and Mail*, the *Chicago Tribune*, the *Chicago Sun-Times*, *Indianapolis Monthly*, the Lexus Hybrid Living website ([www.lexus.com/hybridliving/](http://www.lexus.com/hybridliving/)) and TimeOut Chicago. As a result, Grow has developed substantial goodwill in the GROW Marks.

11. Grow has advertised its business in a variety of media, including print (Chicago Magazine, among others) and television (WGN Morning News, ABC Morning News).

12. Grow is the owner of federal trademark applications for the marks GROW (Serial No. 77/340,471), GROW MODERN ORGANIC KIDS (Serial No. 77/340,502) and the logo shown above (Serial No. 77/340,522), all of which are currently pending at the U.S. Patent & Trademark Office. Each of these applications claims use of the marks in connection with “Retail store services in the field of babies’ and children’s furniture, accessories, strollers and clothing”, in International Class 35. (True and accurate copies of these applications as they appear on the U.S. Patent & Trademark Office’s Trademark Document Retrieval database are attached hereto as Exhibits A, B, and C.)

13. This action arises out of the Defendants’ registration of the domain name [www.growmodern.com](http://www.growmodern.com) and launch of an e-commerce web site at that URL selling babies’ and children’s furniture, accessories, strollers, and clothing under the mark GROWMODERN.

14. Specifically, on or about December 11, 2006, *after* the launch of Grow's brick-and-mortar store and web site, the Defendants, under the assumed name New Industries, registered the domain name www.growmodern.com with Network Solutions.

15. Upon information and belief, New Industries is an assumed business name which the Defendants registered with the Oregon Secretary of State in 2005. Both individual defendants are listed as Authorized Representatives for this business in Oregon corporation records.

16. On or about December 12, 2007, more than one year after the launch of Grow's brick-and-mortar store and web site, the Defendants launched an e-commerce web site at the URL www.growmodern.com. (A true and accurate image of the home page appearing at this address is attached hereto as Exhibit D.)

17. The web site at www.growmodern.com features the trademark GROWMODERN in a lower-case font highly similar to Grow's mark, as can be seen here:



18. The "About Us" page on Defendants' web site states that its products feature "[s]ustainable materials, organic fabrics and ecologically friendly methods of production", mimicking Grow's marketing position. Defendants are offering for sale not only products which are similar to and competitive with Grow's product lines, but also many of the exact same products offered by Grow. Product lines offered by both parties include, without limitation, Alena Hennessy, Argington, Binh, Bumbleride, Inmodern, and Kate Quinn Organics. (A true and accurate image of the "About Us" page appearing at this address is included as part of Exhibit D.)

19. Defendants' use of the GROWMODERN mark and www.growmodern.com domain name are likely to cause confusion among consumers with Grow's previously-used trademarks, irreparably harm Grow, and damage Grow's reputation and goodwill among consumers and vendors.

20. Indeed, such confusion has already occurred. Grow has received communications from vendors who were under the mistaken impression that orders Defendants had placed had originated from Grow, and asking, for example, why Grow was placing duplicate orders. Vendors have also inquired whether Summer Robertson, principal for Defendants, worked for Grow. These instances of confusion were occurring even before the Defendants' web site at www.growmodern.com was operational.

21. Upon information and belief, at the time Defendants registered the www.growmodern.com domain name, and at the very least at the time they launched their e-commerce web site, Defendants were aware of Grow's business and prior use and ownership of the GROW Marks.

22. Despite their knowledge that use of the www.growmodern.com domain name and GROWMODERN trademark were already causing confusion and would harm Grow's brand and goodwill, Defendants nonetheless went forward with the launch of their web site.

## COUNT I

### (Trademark Infringement – 15 U.S.C. § 1114)

23. Grow repeats and realleges the allegations contained in paragraphs 1 through 22 above as if fully set forth herein.

24. As described above, since as early as September 2006, Grow has been the continuous owner of, and has exercised valid trademark rights in, its distinctive GROW Marks.

25. As described above, Grow is the owner of U.S. trademark applications for the marks GROW (Serial No. 77/340,471), GROW MODERN ORGANIC KIDS (Serial No. 77/340,502) and the logo shown above (Serial No. 77/340,522) at Paragraph 9, all of which are currently pending at the U.S. Patent & Trademark Office.

26. Grow's ownership and use in commerce of the GROW Marks predates Defendants' use of the www.growmodern.com domain name and trademark.

27. Defendants were aware of Grow's prior use, ownership, and registration of the GROW Marks at all relevant times.

28. Defendants' conduct in adopting a confusingly similar mark was willful and intentional.

29. Defendants are using the GROWMODERN mark in interstate commerce in connection with the sale, offering for sale, distribution, and/or advertising of its goods or services directly competing against Grow's retail services offered under the GROW Marks.

30. Defendants' GROWMODERN mark is confusingly similar to the GROW Marks, both individually and collectively. The GROWMODERN mark is being used to identify retail services offering products identical to those offered by Grow under the GROW Marks, using identical marketing and advertising channels.

31. Defendants' use in commerce of the GROWMODERN trademark, as described above, constitutes trademark infringement in violation of 15 U.S.C. § 1114 in that it is without Grow's consent and is likely to cause confusion, mistake, and/or deception with respect to the GROW Marks, whether through forward confusion or reverse confusion, all to the irreparable injury of Grow and the goodwill it has developed in the GROW Marks.

32. As a direct and proximate result of Defendants' violations of 15 U.S.C. § 1114, Grow has been and will continue to be damaged.

33. Defendants' actions in using the GROWMODERN mark, unless enjoined and restrained by the Court, will cause irreparable harm to Grow.

## COUNT II

### (False Designation of Origin - 15 U.S.C. § 1125)

34. Grow repeats and realleges the allegations contained in paragraphs 1 through 33 above, as if fully set forth herein.

35. As described above, since as early as September 2006, Grow has been the continuous owner of, and has exercised valid trademark rights in, the distinctive GROW Marks.

36. As described above, Grow is the owner of U.S. trademark applications for the marks GROW (Serial No. 77/340,471), GROW MODERN ORGANIC KIDS (Serial No. 77/340,502) and the logo shown above (Serial No. 77/340,522) in Paragraph 9, all of which are currently pending at the U.S. Patent & Trademark Office.

37. Grow's ownership and use in commerce of the GROW Marks predates Defendants' use of the www.growmodern.com domain name and trademark.

38. Defendants were aware of Grow's prior use, ownership, and registration of the GROW Marks at all relevant times, and Defendants' conduct is therefore willful and intentional.

39. Defendants' GROWMODERN mark is confusingly similar to the GROW Marks, both individually and collectively. The GROWMODERN mark is being used to identify retail services offering products identical to those offered by Grow under the GROW Marks, using identical marketing and advertising channels.

40. Defendants' use in commerce of the GROWMODERN mark, as described above, constitutes false designation of origin in violation of 15 U.S.C. § 1125(a)(1)(A) in that it is likely to cause confusion as to the affiliation, connection, or association of Defendants with Grow and to cause confusion as to the origin, sponsorship, or approval by Grow of Defendants' retail services, whether through forward confusion or reverse confusion.

41. Defendants' actions in using the GROWMODERN trademark, unless enjoined and restrained by the Court, will cause irreparable harm to Grow.

### COUNT III

#### (Cybersquatting – 15 U.S.C. § 1125(d))

42. Grow repeats and realleges the allegations contained in paragraphs 1 through 41 of its Complaint as set forth therein.

43. As described above, since as early as September 2006, Grow has been the continuous owner of, and has exercised valid trademark rights in, the distinctive GROW Marks..

44. Grow's ownership and use in commerce of the GROW Marks predates Defendants' registration of the www.growmodern.com domain name.

45. Each of the GROW Marks was distinctive as of the time that Defendants registered their domain name.

46. Defendants' www.growmodern.com domain name is confusingly similar to the GROW Marks, both individually and collectively.

47. Defendants were aware of Grow's prior use, ownership, and registration of the GROW Marks at all relevant times.

48. Defendants continue to maintain their registration for and use the www.growmodern.com domain name with the bad faith intent to profit from consumer confusion between its site and the GROW Marks.

49. Defendants are using the www.growmodern.com domain name to host a website offering for sale, distribution, and/or advertising of its goods or services directly competing against Grow's retail services offered under the GROW Marks, and designed to confuse internet users and draw traffic away from Grow's own web site.

50. Plaintiff has been harmed by Defendants' actions in violation of 15 U.S.C. 1125(d), in the form of diverted sales and lost goodwill, in an amount to be proven at trial.

51. Defendants' conduct in registering a confusingly similar domain name was willful and intentional and with a bad faith intent to profit from Grow's prior trademark rights.

#### COUNT IV

##### (Illinois Consumer Fraud and Deceptive Trade Practices Act – 815 ILCS 505/1 et seq.)

52. Grow repeats and realleges the allegations contained in paragraphs 1 through 51 above as if fully set forth herein.

53. Defendants' GROWMODERN mark is confusingly similar to the GROW Marks, both individually and collectively. The GROWMODERN mark is being used to identify retail services offering products identical to those offered by Grow under the GROW Marks, using identical marketing and advertising channels.

54. Defendants' conduct, as described herein, constitutes unfair methods of competition and unfair and deceptive practices by employing confusing, deceptive and false designations of origin, source, affiliation and/or sponsorship in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq.

55. Defendants' acts have been willful and deliberate.

56. Grow has been, and continues to be, irreparably injured by Defendants' violation of this statute. Unless Defendants are enjoined, Grow will suffer further irreparable injury for which it has no adequate remedy at law.

### **COUNT V**

#### **(Illinois Uniform Deceptive Trade Practices Act – 815 ILCS 510/1 et seq.)**

57. Grow repeats and realleges the allegations contained in paragraphs 1 through 56 above as if fully set forth herein.

58. Defendants' conduct, as described herein, constitutes deceptive trade practices, causing a likelihood of confusion as to the origin, source, sponsorship, and/or approval of Defendants' goods and services, and/or causing likelihood of confusion or misunderstanding as to the affiliation, connection or association between Grow and/or the GROW Marks and Defendants' www.growmodern.com domain name in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/1 et seq.

59. Defendants' acts have been willful and deliberate.

60. Grow has been, and continues to be, irreparably injured by Defendants' violation of this statute. Unless Defendants are enjoined, Grow will suffer further irreparable injury for which it has no adequate remedy at law.

### **COUNT VI**

#### **(Trademark Infringement - Common Law)**

61. Grow repeats and realleges the allegations contained in paragraphs 1 through 60 above, as if fully set forth herein.

62. Defendants' GROWMODERN mark is confusingly similar to the GROW Marks, both individually and collectively. The GROWMODERN mark is being used to identify retail services offering products identical to those offered by Grow under the GROW Marks, using identical marketing and advertising channels.

63. Defendants' use in commerce of the GROWMODERN trademark, as described above, constitutes common law trademark infringement, in that it is without Grow's consent and is likely to cause confusion, mistake, and/or deception as to the source or origin of such goods or services, whether through forward confusion or reverse confusion and has caused the public to believe that the services offered by Defendants are the same as those of Grow or that such services were authorized, endorsed, sponsored or approved by Grow, or that Defendants were or are connected or associated with Grow.

64. As a direct and proximate result of Defendants' common law trademark infringement, Grow has been and will continue to be damaged.

65. Defendants' actions in using the GROWMODERN trademark, unless enjoined and restrained by the Court, will cause irreparable harm to Grow.

## **COUNT VII**

### **(Unfair Competition – Common Law)**

66. Grow repeats and realleges the allegations contained in paragraphs 1 through 65 above as if fully set forth herein.

67. Defendants' acts, conduct, and practices described above, including without limitation the use of the growmodern.com domain name and GROWMODERN trademark in connection with the promotion, sale, or licensing of retail services for baby products in Illinois

and elsewhere, constitute unfair methods of competition and/or unfair or deceptive acts or practices, which are unlawful under Illinois common law principles.

68. Defendants' actions in using the GROWMODERN trademark, and otherwise unfairly competing with Grow, unless enjoined and restrained by the Court, will cause irreparable harm to Grow.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Grow respectfully requests the following relief:

A. That this Court enjoin Defendants, their employees, agents, servants, and all in privity with any of them, from using the GROWMODERN trademark, or any trademark, service mark, trade name or designation similar thereto, in connection with retail services in the field of furniture, accessories, clothing and related products for babies and children;

B. That this Court order Defendants to transfer to Grow the registration for the domain name www.growmodern.com and any other domain names similar thereto held by Defendants;

C. That this Court award Grow compensatory damages in an amount to be determined at trial;

D. That this Court award Grow treble damages and attorneys' fees pursuant to 15 U.S.C. § 1117, 815 ILCS 505/10a(c), and other applicable laws; and

E. That this Court award Grow its costs and such other and further relief that this Court deems just and proper.

**JURY DEMAND**

Plaintiff hereby demands a jury on all counts.

Dated: December 21, 2007

Respectfully submitted,



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One of the Attorneys for Plaintiff  
Grow Modern Kids LLC

Joseph J. Siprut  
siprut@sw.com  
SCHOPF & WEISS LLP  
One South Wacker Drive, 28<sup>th</sup> Floor  
Chicago, Illinois 60606  
312.701.9300

*Of Counsel:*  
Mark S. Puzella  
Neil T. Smith  
GOODWIN|PROCTER LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
617.570.1000

# EXHIBIT

# A

## Trademark/Service Mark Application, Principal Register

Serial Number: 77340471

Filing Date: 11/29/2007

The table below presents the data as entered.

<b>SERIAL NUMBER</b>	77340471
<b>MARK INFORMATION</b>	
*MARK	GROW
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	GROW
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Grow Modern Kids LLC
*STREET	836 N. Paulina, #103
*CITY	Chicago
*STATE (Required for U.S. applicants)	Illinois
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	60622
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Illinois
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	
*INTERNATIONAL CLASS	035
*DESCRIPTION	Retail store services in the field of babies' and children's furniture, accessories, strollers and clothing
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 09/09/2006
FIRST USE IN COMMERCE DATE	At least as early as 11/17/2006
SPECIMEN	\\TICRS2\EXPORT14\773\404\77340471\xml1\APP0003.JP

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	\\TICRS2\EXPORT14\773\404\77340471\xml\APP0004.JPG
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	\\TICRS2\EXPORT14\773\404\77340471\xml\APP0006.JPG
SPECIMEN DESCRIPTION	Page views from Applicant's web site, through which the services are marketed
<b>ATTORNEY INFORMATION</b>	
NAME	Robert M. O'Connell, Jr.
ATTORNEY DOCKET NUMBER	GMK-600
FIRM NAME	Goodwin Procter LLP
STREET	Exchange Place, 53 State Street
INTERNAL ADDRESS	Attn: Trademark Administrator
CITY	Boston
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	02109
PHONE	617-570-1000
FAX	617-523-1231
EMAIL ADDRESS	tmadmin@goodwinprocter.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Scott L. Allen, Dana Breitman, Stephen G. Charkoudian, Soyong Cho, Adam M. Chud, Robert M. Crawford, Jr., Miguel C. Danielson, John C. Forcier, Lalitha R. Gunturi, Nidhi Kumar, Kevin V. Lam, Joel E. Lehrer, Randall D. Morin, Shaun E. Ryan, Jessica L. Rothstein, Kenda J. Stewart, Gessingga N. Storer, Gregory S. William and Lori S. Woodward
<b>CORRESPONDENCE INFORMATION</b>	
NAME	Robert M. O'Connell, Jr.
FIRM NAME	Goodwin Procter LLP
STREET	Exchange Place, 53 State Street
INTERNAL ADDRESS	Attn: Trademark Administrator
CITY	Boston
STATE	Massachusetts

COUNTRY	United States
ZIP/POSTAL CODE	02109
PHONE	617-570-1000
FAX	617-523-1231
EMAIL ADDRESS	tmadmin@goodwinprocter.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE PAID	325
<b>SIGNATURE INFORMATION</b>	
SIGNATURE	/Deree L. Kobets/
SIGNATORY'S NAME	Deree L. Kobets
SIGNATORY'S POSITION	Managing Member
DATE SIGNED	11/29/2007

### Trademark/Service Mark Application, Principal Register

Serial Number: 77340471

Filing Date: 11/29/2007

#### To the Commissioner for Trademarks:

**MARK:** GROW (Standard Characters, see mark)

The literal element of the mark consists of GROW.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Grow Modern Kids LLC, a limited liability company legally organized under the laws of Illinois, having an address of 836 N. Paulina, #103, Chicago, Illinois, United States, 60622, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 035: Retail store services in the field of babies' and children's furniture, accessories, strollers and clothing

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 035, the mark was first used at least as early as 09/09/2006 and first used in commerce at least as early as 11/17/2006 and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or consisting of a(n) Page views from Applicant's web site, through which the services are marketed.

Specimen File1

Specimen File2

Specimen File3

Specimen File4

The applicant hereby appoints Robert M. O'Connell, Jr. and Scott L. Allen, Dana Breitman, Stephen G. Charkoudian, Soyong Cho, Adam M. Chud, Robert M. Crawford, Jr., Miguel C. Danielson, John C. Forcier, Lalitha R. Gunturi, Nidhi Kumar, Kevin V. Lam, Joel E. Lehrer, Randall D. Morin, Shaun E. Ryan, Jessica L. Rothstein, Kenda J. Stewart, Gessingga N. Storer, Gregory S. William and Lori S. Woodward of Goodwin Procter LLP, Attn: Trademark Administrator, Exchange Place, 53 State Street, Boston, Massachusetts, United States, 02109 to submit this application on behalf of the applicant. The attorney docket/reference number is GMK-600.

Correspondence Information: Robert M. O'Connell, Jr.  
Attn: Trademark Administrator  
Exchange Place, 53 State Street  
Boston, Massachusetts 02109  
617-570-1000(phone)  
617-523-1231(fax)  
tmadmin@goodwinprocter.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Deree L. Kobets/ Date Signed: 11/29/2007

Signatory's Name: Deree L. Kobets

Signatory's Position: Managing Member

RAM Sale Number: 3175

RAM Accounting Date: 11/30/2007

Serial Number: 77340471

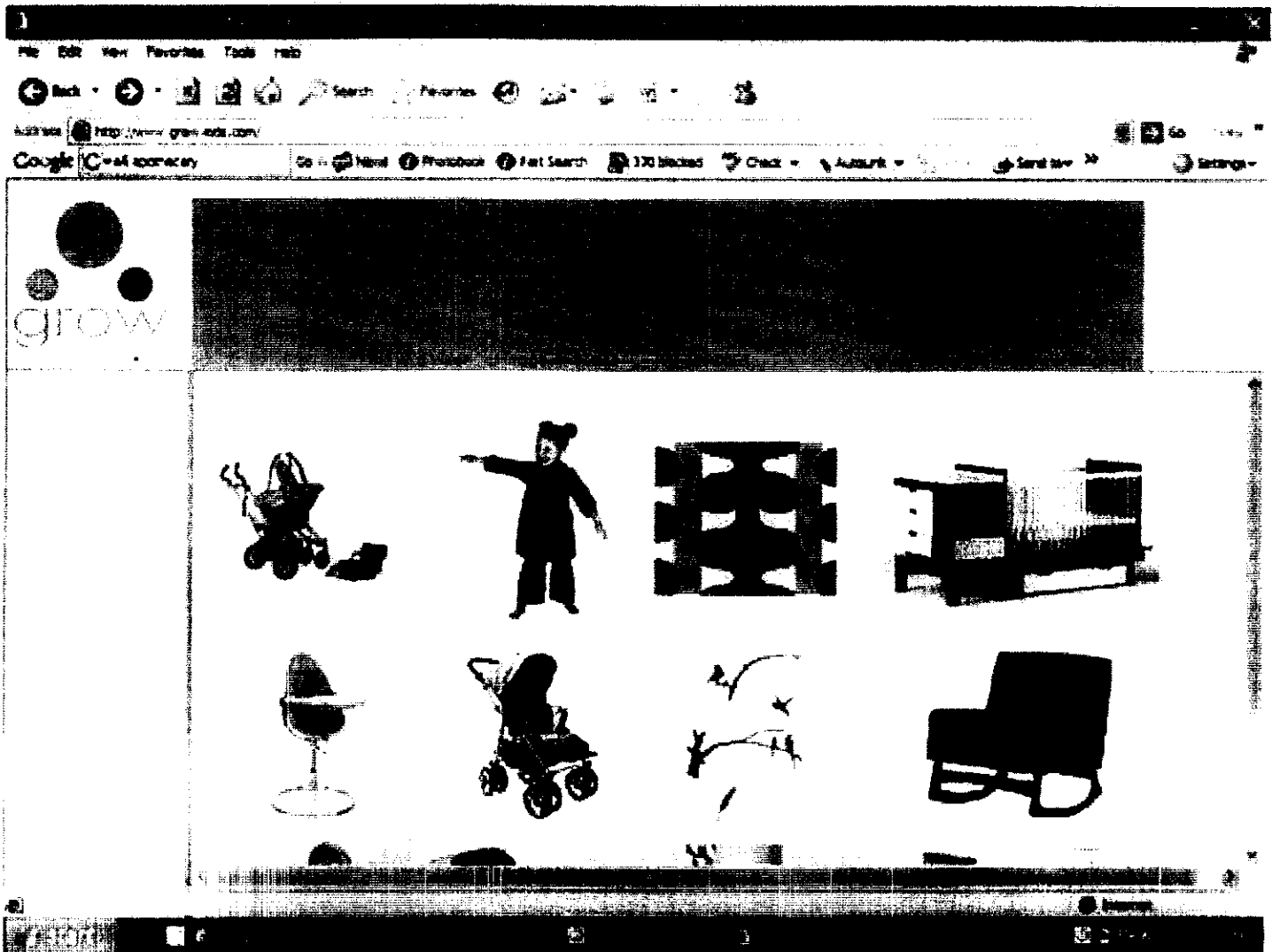
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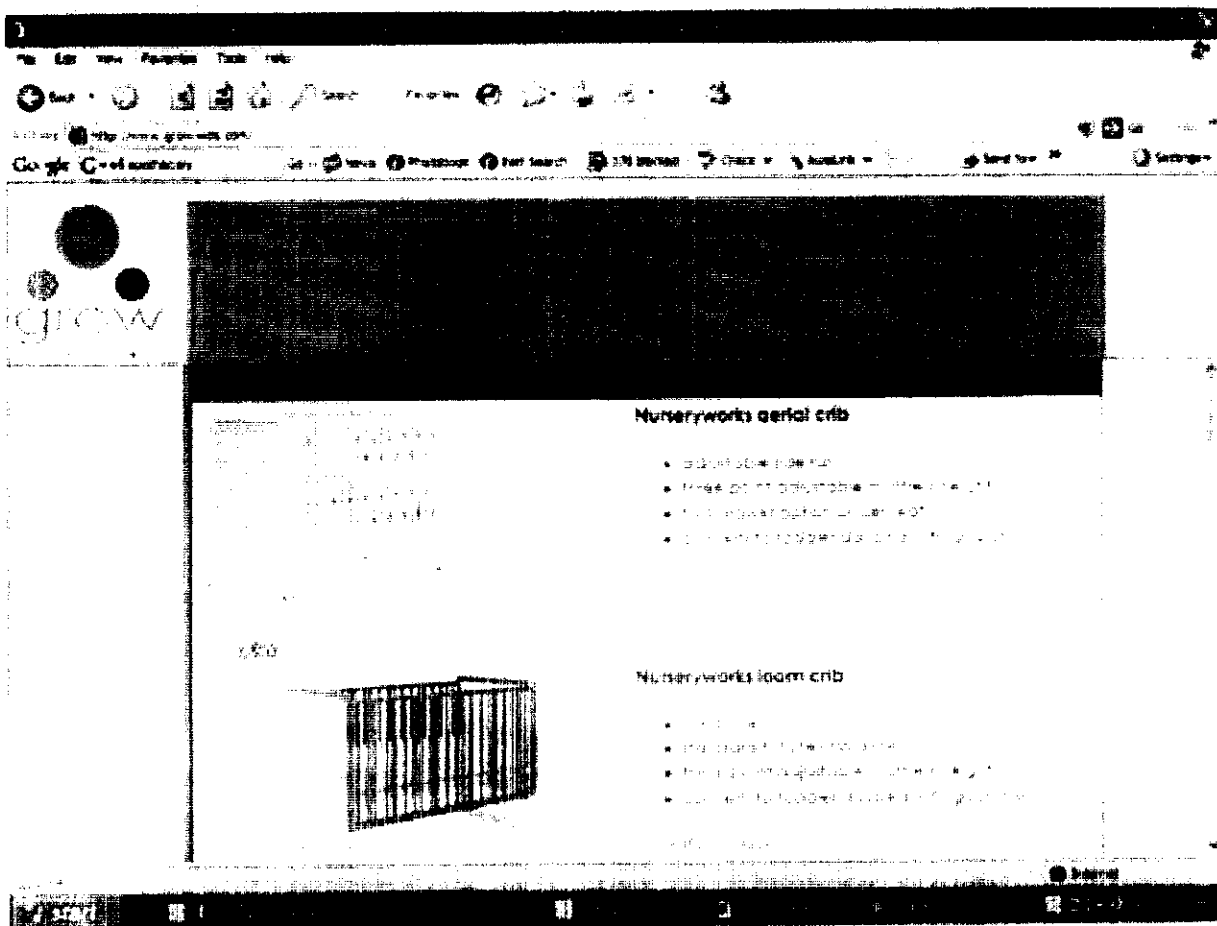
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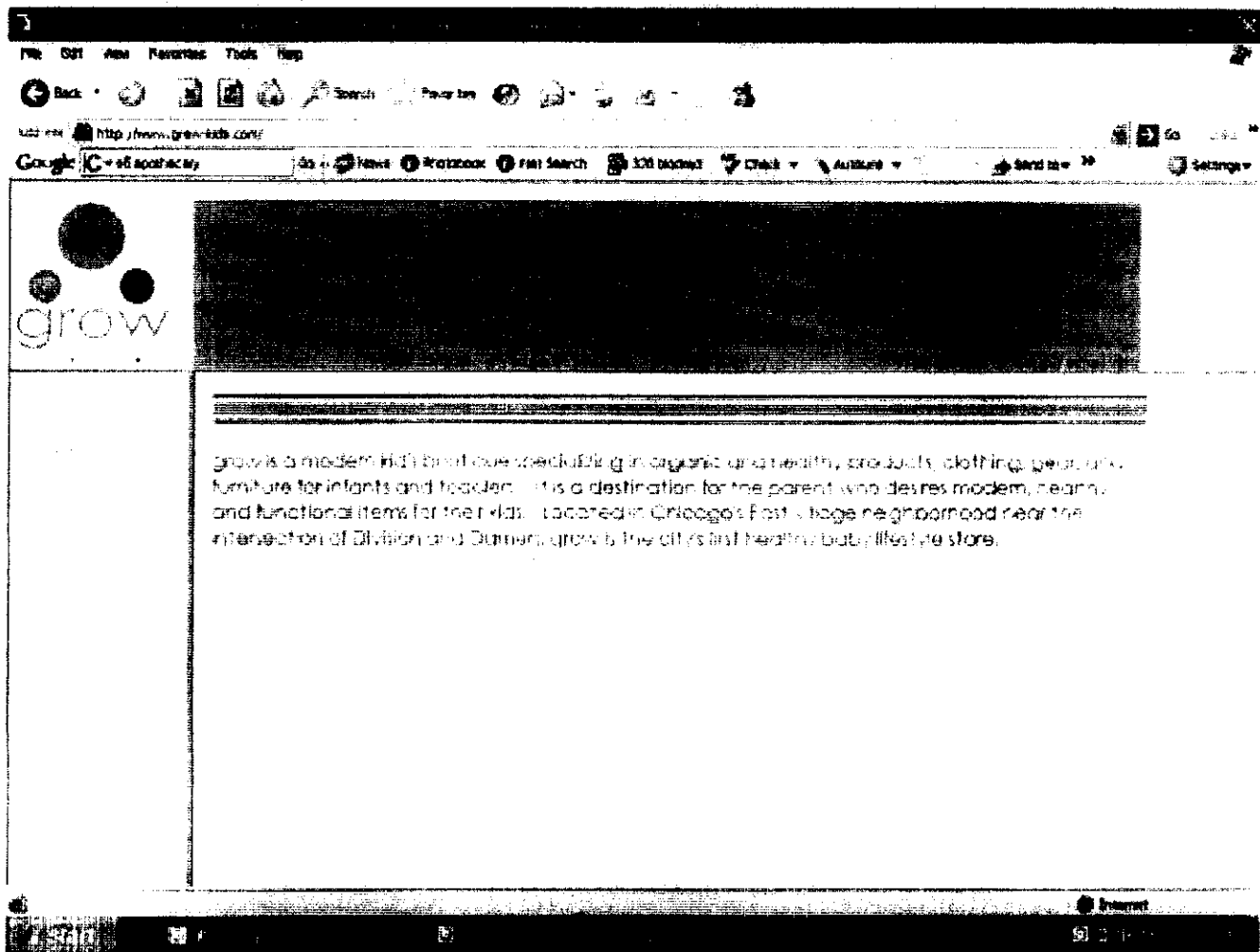
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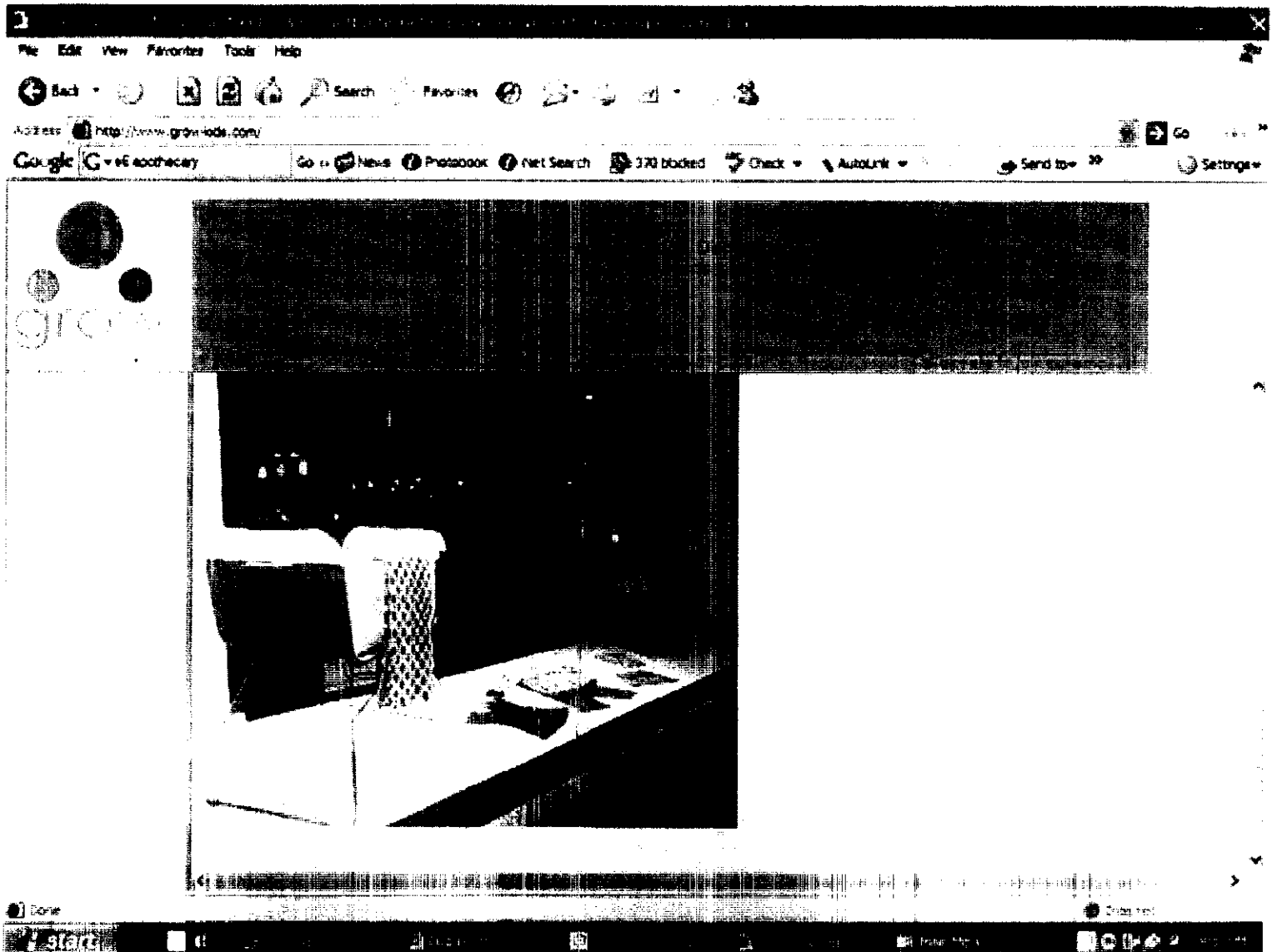
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**GROW**









# **EXHIBIT**

# **B**

## Trademark/Service Mark Application, Principal Register

Serial Number: 77340502

Filing Date: 11/29/2007

The table below presents the data as entered.

<b>SERIAL NUMBER</b>		77340502
<b>MARK INFORMATION</b>		
*MARK	GROW MODERN ORGANIC KIDS	
STANDARD CHARACTERS	YES	
USPTO-GENERATED IMAGE	YES	
LITERAL ELEMENT	GROW MODERN ORGANIC KIDS	
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.	
<b>APPLICANT INFORMATION</b>		
*OWNER OF MARK	Grow Modern Kids LLC	
*STREET	836 N. Paulina, #103	
*CITY	Chicago	
*STATE (Required for U.S. applicants)	Illinois	
*COUNTRY	United States	
*ZIP/POSTAL CODE (Required for U.S. applicants only)	60622	
<b>LEGAL ENTITY INFORMATION</b>		
TYPE	LIMITED LIABILITY COMPANY	
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Illinois	
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>		
*INTERNATIONAL CLASS	035	
*DESCRIPTION	Retail store services in the field of babies' and children's furniture, accessories, strollers and clothing	
FILING BASIS	SECTION 1(a)	
FIRST USE ANYWHERE DATE	At least as early as 11/17/2006	
FIRST USE IN COMMERCE DATE	At least as early as 11/17/2006	
SPECIMEN	\\TICRS2\EXPORT14\773\405\77340502\xml1\APP0003.JP	

	G
	\\TICRS2\EXPORT14\773\405\77340502\xml1\APP0004.JPG
	\\TICRS2\EXPORT14\773\405\77340502\xml1\APP0005.JPG
	\\TICRS2\EXPORT14\773\405\77340502\xml1\APP0006.JPG
SPECIMEN DESCRIPTION	Page views from Applicant's web site, through which the services are marketed
<b>ADDITIONAL STATEMENTS SECTION</b>	
DISCLAIMER	No claim is made to the exclusive right to use KIDS apart from the mark as shown.
<b>ATTORNEY INFORMATION</b>	
NAME	Robert M. O'Connell, Jr.
ATTORNEY DOCKET NUMBER	GMK-601
FIRM NAME	Goodwin Procter LLP
STREET	Exchange Place, 53 State Street
INTERNAL ADDRESS	Attn: Trademark Administrator
CITY	Boston
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	02109
PHONE	617-570-1000
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EMAIL ADDRESS	tmadmin@goodwinprocter.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Scott L. Allen, Dana Breitman, Stephen G. Charkoudian, Soyong Cho, Adam M. Chud, Robert M. Crawford, Jr., Miguel C. Danielson, John C. Forcier, Lalitha R. Gunturi, Nidhi Kumar, Kevin V. Lam, Joel E. Lehrer, Randall D. Morin, Shaun E. Ryan, Jessica L. Rothstein, Kenda J. Stewart, Gessingga N. Storer, Gregory S. William and Lori S. Woodward
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COUNTRY	United States
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PHONE	617-570-1000
FAX	617-523-1231
EMAIL ADDRESS	tmadmin@goodwinprocter.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE PAID	325
<b>SIGNATURE INFORMATION</b>	
SIGNATURE	/Deree L. Kobets/
SIGNATORY'S NAME	Deree L. Kobets
SIGNATORY'S POSITION	Managing Member
DATE SIGNED	11/29/2007

### Trademark/Service Mark Application, Principal Register

Serial Number: 77340502

Filing Date: 11/29/2007

#### To the Commissioner for Trademarks:

**MARK:** GROW MODERN ORGANIC KIDS (Standard Characters, see mark)

The literal element of the mark consists of GROW MODERN ORGANIC KIDS.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Grow Modern Kids LLC, a limited liability company legally organized under the laws of Illinois, having an address of 836 N. Paulina, #103, Chicago, Illinois, United States, 60622, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

International Class 035: Retail store services in the field of babies' and children's furniture, accessories, strollers and clothing

Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 035, the mark was first used at least as early as 11/17/2006 and first used in commerce at least as early as 11/17/2006 and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or consisting of a(n) Page views from Applicant's web site, through which the services are marketed.

Specimen File1  
Specimen File2  
Specimen File3  
Specimen File4

No claim is made to the exclusive right to use KIDS apart from the mark as shown.

The applicant hereby appoints Robert M. O'Connell, Jr. and Scott L. Allen, Dana Breitman, Stephen G. Charkoudian, Soyong Cho, Adam M. Chud, Robert M. Crawford, Jr., Miguel C. Danielson, John C. Forcier, Lalitha R. Gunturi, Nidhi Kumar, Kevin V. Lam, Joel E. Lehrer, Randall D. Morin, Shaun E. Ryan, Jessica L. Rothstein, Kenda J. Stewart, Gessingga N. Storer, Gregory S. William and Lori S. Woodward of Goodwin Procter LLP, Attn: Trademark Administrator, Exchange Place, 53 State Street, Boston, Massachusetts, United States, 02109 to submit this application on behalf of the applicant. The attorney docket/reference number is GMK-601.

Correspondence Information: Robert M. O'Connell, Jr.  
Attn: Trademark Administrator  
Exchange Place, 53 State Street  
Boston, Massachusetts 02109  
617-570-1000(phone)  
617-523-1231(fax)  
tmadmin@goodwinprocter.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

**Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Deree L. Kobets/ Date Signed: 11/29/2007

Signatory's Name: Deree L. Kobets

Signatory's Position: Managing Member

RAM Sale Number: 3345

RAM Accounting Date: 11/30/2007

Serial Number: 77340502

Internet Transmission Date: Thu Nov 29 18:18:59 EST 2007

TEAS Stamp: USPTO/BAS-66.181.94.5-200711291818591908

78-77340502-400652e459b7b8119247d9deee2

92cbb2-DA-3345-20071129180412900116

GROW MODERN ORGANIC KIDS

# EXHIBIT

# C

## Trademark/Service Mark Application, Principal Register

Serial Number: 77340522

Filing Date: 11/29/2007

The table below presents the data as entered.

<b>SERIAL NUMBER</b>	77340522
<b>MARK INFORMATION</b>	
*MARK	\\TICRS2\EXPORT14\773\405\77340522\xml\APP0002.JPG
SPECIAL FORM	YES
USPTO-GENERATED IMAGE	NO
LITERAL ELEMENT	GROW MODERN ORGANIC KIDS
COLOR MARK	YES
COLOR(S) CLAIMED (If applicable)	The color(s) orange, green and brown is/are claimed as a feature of the mark.
DESCRIPTION OF THE MARK (and Color Location, if applicable)	The mark consists of the word GROW in large stylized orange lower case type; beneath it are the words MODERN ORGANIC and KIDS in smaller green lower case type, separated by dots; above the writing are three circles colored green, brown and orange.
PIXEL COUNT ACCEPTABLE	YES
PIXEL COUNT	348 x 361
<b>APPLICANT INFORMATION</b>	
*OWNER OF MARK	Grow Modern Kids LLC
*STREET	836 N. Paulina, #103
*CITY	Chicago
*STATE (Required for U.S. applicants)	Illinois
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	60622
<b>LEGAL ENTITY INFORMATION</b>	
TYPE	LIMITED LIABILITY COMPANY
STATE/COUNTRY WHERE LEGALLY ORGANIZED	Illinois
<b>GOODS AND/OR SERVICES AND BASIS INFORMATION</b>	

*INTERNATIONAL CLASS	035
*DESCRIPTION	Retail store services in the field of babies' and children's furniture, accessories, strollers and clothing
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 11/17/2006
FIRST USE IN COMMERCE DATE	At least as early as 11/17/2006
SPECIMEN FILE NAME(S)	\\TICRS2\EXPORT14\773\405\77340522\xml1\APP0003.JPG
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	\\TICRS2\EXPORT14\773\405\77340522\xml1\APP0005.JPG
	\\TICRS2\EXPORT14\773\405\77340522\xml1\APP0006.JPG
SPECIMEN DESCRIPTION	Page views from Applicant's web site, through which the services are marketed
<b>ADDITIONAL STATEMENTS SECTION</b>	
DISCLAIMER	No claim is made to the exclusive right to use KIDS apart from the mark as shown.
<b>ATTORNEY INFORMATION</b>	
NAME	Robert M. O'Connell, Jr.
ATTORNEY DOCKET NUMBER	GMK-602
FIRM NAME	Goodwin Procter LLP
STREET	Exchange Place, 53 State Street
INTERNAL ADDRESS	Attn: Trademark Administrator
CITY	Boston
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	02109
PHONE	617-570-1000
FAX	617-523-1231
EMAIL ADDRESS	tmadmin@goodwinprocter.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Scott L. Allen, Dana Breitman, Stephen G. Charkoudian, Soyong Cho, Adam M. Chud, Robert M. Crawford, Jr., Miguel C. Danielson, John C. Forcier, Lalitha R. Gunturi, Nidhi Kumar, Kevin V. Lam, Joel E. Lehrer, Randall D. Morin, Shaun E. Ryan, Jessica L. Rothstein, Kenda J. Stewart, Cassiano N. Storer, Gregory S. Williams and Lori S.

	Woodward
<b>CORRESPONDENCE INFORMATION</b>	
NAME	Robert M. O'Connell, Jr.
FIRM NAME	Goodwin Procter LLP
STREET	Exchange Place, 53 State Street
INTERNAL ADDRESS	Attn: Trademark Administrator
CITY	Boston
STATE	Massachusetts
COUNTRY	United States
ZIP/POSTAL CODE	02109
PHONE	617-570-1000
FAX	617-523-1231
EMAIL ADDRESS	tmadmin@goodwinprocter.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
<b>FEE INFORMATION</b>	
NUMBER OF CLASSES	1
FEE PER CLASS	325
TOTAL FEE PAID	325
<b>SIGNATURE INFORMATION</b>	
SIGNATURE	/Deree L. Kobets/
SIGNATORY'S NAME	Deree L. Kobets
SIGNATORY'S POSITION	Managing Member
DATE SIGNED	11/29/2007

### Trademark/Service Mark Application, Principal Register

Serial Number: 77340522

Filing Date: 11/29/2007

#### To the Commissioner for Trademarks:

**MARK:** GROW MODERN ORGANIC KIDS (stylized and/or with design, see mark)

The literal element of the mark consists of GROW MODERN ORGANIC KIDS.

The color(s) orange, green and brown is/are claimed as a feature of the mark. The mark consists of the word GROW in large stylized orange lower case type; beneath it are the words MODERN ORGANIC and KIDS in smaller green lower case type, separated by dots; above the writing are three

circles colored green, brown and orange.

The applicant, Grow Modern Kids LLC, a limited liability company legally organized under the laws of Illinois, having an address of 836 N. Paulina, #103, Chicago, Illinois, United States, 60622, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

**International Class 035:** Retail store services in the field of babies' and children's furniture, accessories, strollers and clothing

**Use in Commerce:** The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, or the applicant's predecessor in interest used the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

In International Class 035, the mark was first used at least as early as 11/17/2006 and first used in commerce at least as early as 11/17/2006 and is now in use in such commerce. The applicant is submitting or will submit one specimen for *each class* showing the mark as used in commerce on or in connection with any item in the class of listed goods and/or consisting of a(n) Page views from Applicant's web site, through which the services are marketed.

Specimen File1

Specimen File2

Specimen File3

Specimen File4

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Correspondence Information:

Robert M. O'Connell, Jr.

Attn: Trademark Administrator

Exchange Place, 53 State Street

Boston, Massachusetts 02109

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617-523-1231(fax)

tmadmin@goodwinprocter.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

#### **Declaration**

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /Deree L. Kobets/ Date Signed: 11/29/2007

Signatory's Name: Deree L. Kobets

Signatory's Position: Managing Member

RAM Sale Number: 3510

RAM Accounting Date: 11/30/2007

Serial Number: 77340522

Internet Transmission Date: Thu Nov 29 18:40:28 EST 2007

TEAS Stamp: USPTO/BAS-66.181.94.5-200711291840287018

87-77340522-4009474966868bfb70fe6f75c1e6

07b66-DA-3510-20071129182258355746



# **EXHIBIT**

# **D**

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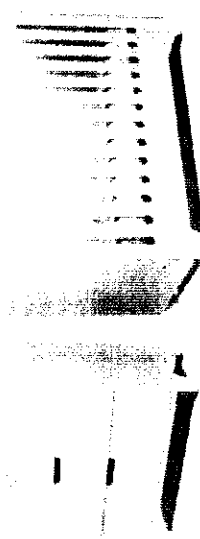
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Welcome to growmodern.

Growmodern was founded on the belief that good design can and should be enjoyed by the entire family.

Our vision at Growmodern is to be the starting point for parents to share the joys of good design with their children and to provide outstanding service to our customers. We offer a well curated selection of products you will appreciate for their superior quality as well as their thoughtful design. Pieces that will be treasured for generations to come.

We view modern as way of life that goes beyond style. Sustainable materials, organic fabrics and ecologically friendly methods of production are a critical part of a well designed product. We are delighted to be working with many manufacturers and designers who have "gone green" in their selection of materials and manufacturing processes.

We hope to create a fun web based environment for you to enjoy, whether you visit often to see what's new + inspiring, or are about to dive into outfitting an entire nursery. Should you need any personal assistance, have any questions or desire to contact us for any reason, we look forward to hearing from you.

#### Why buy from growmodern?

Free shipping on orders over \$50

Some of our manufacturers require us to charge a portion of the freight costs regardless of any free shipping we may offer. This will always be noted on the product page before you buy.

No sales tax

Growmodern is located in beautiful sales-tax-free Oregon and charges no sales tax on any orders shipped within the United States.

Secured online shopping

Your online security is very important to us. All internet transactions and account information is secured by a 256 bit Secured Sockets Layer (SSL) for your protection. This level of protection is among the highest available.

Outstanding customer service

Growmodern is dedicated to our customers satisfaction. We thoughtfully consider all of our customers needs. From any questions you may have about a product, to ensuring a safe on time delivery - we are with you every step of the way. Were here to help and we aim to please.

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